

SENATE BILL 450 (LRB -2227)

An Act to amend 59.40 (2) (f), 66.0901 (2), 703.22 (title), 703.22 (2), 703.22 (3), 779.01 (2) (a), 779.01 (2) (d) (intro.), 779.01 (2) (d) 1., 779.01 (2) (d) 2., 779.01 (3), 779.01 (4), 779.01 (5), 779.02 (1) (b), 779.02 (1) (c), 779.02 (1) (e), 779.02 (2) (title), 779.02 (2) (a), 779.02 (2) (b), 779.02 (2) (c), 779.02 (2) (d), 779.02 (2) (e), 779.02 (3), 779.02 (5), 779.03 (1), 779.035 (1), 779.035 (2) (b) 1., 779.035 (2) (b) 2. a., 779.035 (2) (b) 2. c., 779.035 (3), 779.036 (1), 779.036 (2), 779.036 (3), 779.036 (4) (a), 779.05 (1), 779.06 (1), 779.06 (2), 779.06 (3), 779.07 (1) (d), 779.08 (1), 779.08 (2), 779.10, 779.13 (2), 779.135 (1), 779.135 (3), 779.14 (1) (intro.), 779.14 (1) (a), 779.14 (1) (b), 779.14 (1e) (a), 779.14 (1e) (b), 779.14 (1m) (c) (intro.), 779.14 (1m) (d) (intro.), 779.14 (1m) (e) 2. b., 779.14 (2) (a) (intro.), 779.14 (2) (a) 2., 779.14 (2) (a) 3., 779.14 (2) (am) 1., 779.14 (2) (am) 2. a., 779.14 (2) (am) 2. b., 779.14 (2) (am) 2. c., 779.14 (3), 779.15 (title), 779.15 (1), 779.15 (2), 779.15 (3), 779.15 (4) (a), 779.155 (2), 779.155 (3), 779.155 (4), 779.155 (5) (a), 779.155 (5) (b), 779.155 (6), 779.155 (7), 779.16 and 779.17; and to create 779.01 (2) (e) of the statutes; relating to: construction liens, requirements for securing payment for work on publicly financed projects, and providing a penalty. (FE)

2005

- 01-18. S. Introduced by Senators **Zien, Brown, Grothman, Roessler** and **A. Lasee**; cosponsored by Representatives **Moulton, Townsend, Van Roy, Vos** and **Hines**.
- 11-23. S. Read first time and referred to committee on Judiciary, Corrections and Privacy 462
- 11-29. S. Executive action taken.
- 12-07. S. Fiscal estimate received.
- 12-09. S. Fiscal estimate received.

2006

- 01-04. S. Report passage recommended by committee on Judiciary, Corrections and Privacy, Ayes 3, Noes 2 514
- 01-04. S. Available for scheduling.
- 01-18. S. Placed on calendar 1-19-2006 by committee on Senate Organization.
- 01-19. S. Read a second time 540
- 01-19. S. Refused to refer to committee on Judiciary, Corrections and Privacy 540
- 01-19. S. Ordered to a third reading 540
- 01-19. S. Rules suspended 540
- 01-19. S. Read a third time and **passed** 540
- 01-19. S. Ordered immediately messaged 541
- 01-30. A. Received from Senate 766
- 01-30. A. Read first time and referred to committee on Judiciary 767
- 02-08. S. LRB correction.
- 02-09. A. Public hearing held.
- 02-22. A. Fiscal estimate received.
- 02-22. A. Fiscal estimate received.
- 02-23. A. Assembly amendment 1 offered by Representative Moulton (**LRB a2401**) 832
- 02-23. A. Executive action taken.
- 02-27. A. Report Assembly Amendment 1 adoption recommended by committee on Judiciary, Ayes 7, Noes 0 849
- 02-27. A. Report concurrence as amended recommended by committee on Judiciary, Ayes 7, Noes 0 849
- 02-27. A. Referred to committee on Rules 849
- 03-02. A. Placed on calendar 3-7-2006 by committee on Rules.
- 03-02. A. Made a special order of business at 11:41 A.M. on 3-7-2006 pursuant to Assembly Resolution 50 899
- 03-06. A. Assembly amendment 2 offered by Representative Moulton (**LRB a2591**) 903
- 03-07. A. Read a second time 922
- 03-07. A. Assembly amendment 1 **adopted** 922
- 03-07. A. Assembly amendment 2 **adopted** 922
- 03-07. A. Ordered to a third reading 922
- 03-07. A. Rules suspended 922
- 03-07. A. Read a third time and **concurred in** as amended, Ayes 94, Noes 0, Paired 2 922
- 03-07. A. Ordered immediately messaged 922
- 03-07. S. Received from Assembly amended and concurred in as amended, Assembly amendments 1 and 2 adopted.
- 03-07. S. Available for scheduling.
- 03-08. S. Placed on calendar 3-9-2006 by committee on Senate Organization.
- 03-09. S. Assembly amendment 1 **concurred in**.
- 03-09. S. Assembly amendment 2 **concurred in**.
- 03-09. S. Action ordered immediately messaged.

gmb

2005 ENROLLED BILL

05en 5B-450

ADOPTED DOCUMENTS:

☒ Orig ☐ Engr SubAmdt

05 -2227/3

Amendments to above (if none, write "NONE"): AA1 - a 2401/1
AA2 - a 2591/1

Corrections - show date (if none, write "NONE"): 2/8/06

Topic Rel

3-14-06

Date

JR Miller

Enrolling Drafter

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2005-2006 LEGISLATURE

CORRECTIONS IN:

2005 SENATE BILL 450

Prepared by the Legislative Reference Bureau
(February 8, 2006)

1. Page 28, line 21: delete "prime prime" and substitute "prime".

(END)

2005 SENATE BILL 450

November 23, 2005 – Introduced by Senators ZIEN, BROWN, GROTHMAN, ROESSLER and A. LASEE, cosponsored by Representatives MOULTON, TOWNSEND, VAN ROY, VOS and HINES. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to amend* 59.40 (2) (f), 66.0901 (2), 703.22 (title), 703.22 (2), 703.22 (3),
2 779.01 (2) (a), 779.01 (2) (d) (intro.), 779.01 (2) (d) 1., 779.01 (2) (d) 2., 779.01 (3),
3 779.01 (4), 779.01 (5), 779.02 (1) (b), 779.02 (1) (c), 779.02 (1) (e), 779.02 (2)
4 (title), 779.02 (2) (a), 779.02 (2) (b), 779.02 (2) (c), 779.02 (2) (d), 779.02 (2) (e),
5 779.02 (3), 779.02 (5), 779.03 (1), 779.035 (1), 779.035 (2) (b) 1., 779.035 (2) (b)
6 2. a., 779.035 (2) (b) 2. c., 779.035 (3), 779.036 (1), 779.036 (2), 779.036 (3),
7 779.036 (4) (a), 779.05 (1), 779.06 (1), 779.06 (2), 779.06 (3), 779.07 (1) (d),
8 779.08 (1), 779.08 (2), 779.10, 779.13 (2), 779.135 (1), 779.135 (3), 779.14 (1)
9 (intro.), 779.14 (1) (a), 779.14 (1) (b), 779.14 (1e) (a), 779.14 (1e) (b), 779.14 (1m)
10 (c) (intro.), 779.14 (1m) (d) (intro.), 779.14 (1m) (e) 2. b., 779.14 (2) (a) (intro.),
11 779.14 (2) (a) 2., 779.14 (2) (a) 3., 779.14 (2) (am) 1., 779.14 (2) (am) 2. a., 779.14
12 (2) (am) 2. b., 779.14 (2) (am) 2. c., 779.14 (3), 779.15 (title), 779.15 (1), 779.15
13 (2), 779.15 (3), 779.15 (4) (a), 779.155 (2), 779.155 (3), 779.155 (4), 779.155 (5)
14 (a), 779.155 (5) (b), 779.155 (6), 779.155 (7), 779.16 and 779.17; and *to create*

SENATE BILL 450

1 779.01 (2) (e) of the statutes; **relating to:** construction liens, requirements for
2 securing payment for work on publicly financed projects, and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

Current law allows persons (such as prime contractors, subcontractors, and suppliers) who do work or furnish materials for improvements to real estate to file liens on the real estate to secure their right to payment. These liens are generally referred to as “construction liens.” Under current law, construction liens are available on projects that do not involve public financing. Current law imposes different requirements for securing payment for work performed or materials furnished for projects that are publicly financed.

This bill makes the following changes to construction liens and the requirements that apply to publicly financed projects:

Activities for which lien may be claimed. Current law allows a person to claim a construction lien for labor that the person performs, or materials, plans, or specifications, that the person provides, for an improvement to real estate. However, in referring to labor and materials, current law does not consistently also refer to plans and specifications. This bill allows a person to file a construction lien for any of the following activities: performing, furnishing, or procuring any labor, services, materials, plans, or specifications for an improvement to real estate. The bill changes current law to consistently refer to such activities.

Repairs and remodeling. Under current law, a person may claim a construction lien for an “improvement” to real estate, which is defined as any building, structure, erection, demolition, alteration, excavation, filling, grading, tiling, planting, or landscaping that is done on or to land for its permanent benefit. This bill expands the definition to also include repairing or remodeling that is done on or to land for its benefit. The bill also eliminates the requirement that an improvement must be for the permanent benefit of the land.

Publicly financed projects. The requirements under current law for publicly financed projects apply to persons who furnish material used or consumed in making a publicly financed improvement, including any in the following list: fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker’s compensation insurance, and contributions for unemployment insurance. The bill eliminates the foregoing list and refers instead to a person who furnishes any material used or consumed in making a publicly financed improvement.

Sixty-day and ten-day notices. Under current law, a subcontractor or supplier who works or furnishes material for certain improvements to real estate is not allowed to make a claim for a construction lien unless, within 60 days after first performing work or furnishing material for the project, the subcontractor or supplier

SENATE BILL 450

has provided the owner of the real estate a notice specified under current law. The improvements that this notice requirement applies to are the following: 1) a wholly residential improvement in which four or less family living units are provided or added; and 2) a partly or wholly nonresidential improvement in which 10,000 or less total usable square feet are provided or added. A prime contractor must also give a notice to the owner in order to claim a construction lien for the foregoing types of improvements. If the contractor does not include the notice in the contract with the owner, the prime contractor must provide the notice within ten days after labor or materials are furnished. If the prime contractor does not provide the notice, the prime contractor may claim a construction lien only if certain other requirements are satisfied.

Under the bill, for a wholly residential improvement described above, a subcontractor or supplier must provide the 60-day notice and the prime contractor must provide the ten-day notice. However, notice by a subcontractor, supplier, or prime contractor is not required for any wholly or partly nonresidential improvement, regardless of the square footage of usable floor space that is added or provided.

In addition, under the bill, if a ten-day notice is required and the prime contractor does not provide the notice, the prime contractor may claim a construction lien, but only if the prime contractor's subcontractors and suppliers have been paid and none of the prime contractor's subcontractors or suppliers have provided the 60-day notice to the owner. Current law also allows a prime contractor to claim a construction lien under these circumstances, except that current law refers to subcontractors and suppliers, rather than specifically referring to the prime contractor's subcontractors and suppliers.

Service of notice. Current law contains various notice requirements for construction liens and publicly financed projects. Under this bill, any duty to provide notice regarding a construction lien or a publicly financed project may be accomplished by serving the notice on a party in any of the following ways: 1) by personal delivery; 2) by registered or certified mail; 3) in the same manner that is required under current law for service of a summons in circuit court; or 4) by any other means of delivery in which the party receiving the notice makes written confirmation of the delivery. In addition, the bill requires prime contractors and subcontractors who dispute lien claims to serve notice of the dispute in the foregoing manner. Current law does not specify how to provide notice of such a dispute.

Other changes. The bill makes other changes, including the following:

1. Under current law, a person may not bring an action to enforce a construction lien on real estate unless, within six months from the date the person last performed work or furnished materials, the person files a claim for the lien with the circuit court. This bill requires a person to serve a copy of the claim on the owner of the real estate within 30 days after filing the claim with the circuit court.

2. Under current law, under certain circumstances, an owner of real estate or other interested party may release a construction lien from the real estate by substituting two sureties for the lien. This bill requires only one surety.

SENATE BILL 450

3. Under current law, prime contractors and subcontractors on both privately and publicly financed projects must hold certain moneys in trust for the payment of claims for labor and materials. Failure to comply with this requirement is theft. Under this bill, if the prime contractor or subcontractor is a business entity, specified individuals who represent the entity may also be guilty of theft.

4. Current law allows a prime contractor on a publicly financed project to dispute a claim for payment by a subcontractor or supplier. If the prime contractor disputes the claim, the prime contractor must provide written notice of the dispute to the governmental body contracting for the work. This bill requires the prime contractor also to provide written notice of the dispute to the subcontractor or supplier.

5. The bill changes certain references to “contractor” or “general contractor” under current law to refer instead to “prime contractor.” In addition, the bill changes the definition of “prime contractor” to include construction managers and certain other service providers.

6. Under current law, persons who supply material for an improvement are referred to as suppliers, materialmen, or material suppliers. Under this bill, such persons are consistently referred to as “suppliers.”

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.40 (2) (f) of the statutes is amended to read:

2 59.40 (2) (f) Keep a judgment and lien docket of all claims for liens filed by
3 prime contractors, subcontractors, ~~materialmen~~ suppliers, service providers, and
4 laborers and all claims filed for log, mining, and maintenance liens.

5 **SECTION 2.** 66.0901 (2) of the statutes is amended to read:

6 66.0901 (2) BIDDER'S PROOF OF RESPONSIBILITY. A municipality intending to enter
7 into a public contract may, before delivering any form for bid proposals, plans, and
8 specifications to any person, except ~~materialmen~~, suppliers, and others not

SENATE BILL 450

1 intending to submit a direct bid, require the person to submit a full and complete
2 statement sworn to before an officer authorized by law to administer oaths. The
3 statement shall consist of information relating to financial ability, equipment,
4 experience in the work prescribed in the public contract, and other matters that the
5 municipality requires for the protection and welfare of the public in the performance
6 of a public contract. The statement shall be in writing on a standard form of a
7 questionnaire that is adopted and furnished by the municipality. The statement
8 shall be filed in the manner and place designated by the municipality. The statement
9 shall not be received less than 5 days prior to the time set for the opening of bids.
10 The contents of the statement shall be confidential and may not be disclosed except
11 upon the written order of the person furnishing the statement, for necessary use by
12 the public body in qualifying the person, or in cases of actions against, or by, the
13 person or municipality. The governing body of the municipality or the committee,
14 board, or employee charged with, or delegated by the governing body with, the duty
15 of receiving bids and awarding contracts shall properly evaluate the statement and
16 shall find the maker of the statement either qualified or unqualified. This subsection
17 does not apply to a 1st class city.

18 **SECTION 3.** 703.22 (title) of the statutes is amended to read:

19 **703.22 (title) Mechanics' and materialmen's suppliers' liens.**

20 **SECTION 4.** 703.22 (2) of the statutes is amended to read:

21 703.22 (2) Any mechanics' lien or ~~materialmen's~~ suppliers' lien under subch.
22 I of ch. 779 arising as a result of repairs to or improvements of a unit by a unit owner
23 shall be a lien only against the unit.

24 **SECTION 5.** 703.22 (3) of the statutes is amended to read:

SENATE BILL 450

SECTION 5

1 703.22 (3) Any mechanics' or ~~materialmen's~~ suppliers' lien under subch. I of ch.
2 779 arising as a result of repairs to or improvements of the common elements, if
3 authorized in writing by the association, shall be paid by the association as a common
4 expense and until paid shall be a lien against each unit in proportion to its percentage
5 interest in the common elements. On payment of the proportionate amount by any
6 unit owner to the lienor or on the filing of a written undertaking in the manner
7 specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit
8 from the lien and the association shall not be entitled to assess his or her unit for
9 payment of the remaining amount due for the repairs or improvements.

10 SECTION 6. 779.01 (2) (a) of the statutes is amended to read:

11 779.01 (2) (a) "Improve" or "improvement" includes any building, structure,
12 erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting,
13 clearing ~~or~~, landscaping, repairing, or remodeling which is built, erected, made or
14 done on or to land for its permanent benefit. This enumeration is intended as an
15 extension rather than a limitation of the normal meaning and scope of "improve" and
16 "improvement".

INSERT 1-1

17 SECTION 7. 779.01 (2) (d) (intro.) of the statutes is amended to read:

18 779.01 (2) (d) (intro.) "Prime contractor" means any of the following:

19 SECTION 8. 779.01 (2) (d) 1. of the statutes is amended to read:

20 779.01 (2) (d) 1. A person, other than a laborer, but including an architect,
21 professional engineer, ~~or~~ construction manager, surveyor, or other service provider,
22 employed by the owner, who enters into a contract with an owner of land who is not
23 personally the prime contractor as defined in subd. 2. to improve the land, or who
24 takes over from a prime contractor the uncompleted contract; ~~or~~.

25 SECTION 9. 779.01 (2) (d) 2. of the statutes is amended to read:

SENATE BILL 450

1 779.01 (2) (d) 2. An owner of land who acts personally as general prime
2 contractor in improving such land.

3 **SECTION 10.** 779.01 (2) (e) of the statutes is created to read:

4 779.01 (2) (e) “Serve” or “served” means personal delivery, delivery by
5 registered or certified mail, service in a manner described for service of a summons
6 under s. 801.14, or any other means of delivery in which the recipient makes written
7 confirmation of the delivery.

INSERT 2-1

8 **SECTION 11.** 779.01 (3) of the statutes is amended to read:

9 779.01 (3) EXTENT AND CHARACTER OF LIEN. ~~Every~~ Any person who performs,
10 furnishes, or procures any work ~~or procures its performance or furnishes any~~, labor
11 ~~or~~, service, materials ~~or~~, plans, or specifications, used or consumed for the
12 improvement of land, and who complies with s. 779.02, shall have a lien therefor on
13 all interests in the land belonging to its owners. The lien extends to all contiguous
14 land of the owner, but if the improvement is located wholly on one or more platted
15 lots belonging to the owner, the lien applies only to the lots on which the improvement
16 is located.

17 **SECTION 12.** 779.01 (4) of the statutes is amended to read:

18 779.01 (4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall
19 be prior to any lien which originates subsequent to the visible commencement in
20 place of the work of improvement, except as otherwise provided by ss. 215.21 (4) (a),
21 292.31 (8) (i), 292.81 and 706.11 (1) and (1m). When new construction is the principal
22 improvement involved, commencement is considered to occur no earlier than the
23 beginning of substantial excavation for the foundations, footings or base of the new
24 construction, except where the new construction is to be added to a substantial
25 existing structure, in which case the commencement is the time of the beginning of

SENATE BILL 450**SECTION 12**

1 substantial excavation or the time of the beginning of substantial preparation of the
2 existing structure to receive the added new construction, whichever is earlier. The
3 lien also shall be prior to any unrecorded mortgage given prior to the commencement
4 of the work of improvement, if the lien claimant has no actual notice of the mortgage
5 before the commencement. Lien claimants who perform ~~work or~~, furnish, or procure
6 ~~its performance or furnish~~ any labor ~~or~~, services, materials ~~or~~, plans, or specifications
7 for an improvement prior to the visible commencement of the work of improvement
8 shall have lien rights, but shall have only the priority accorded to other lien
9 claimants.

10 **SECTION 13.** 779.01 (5) of the statutes is amended to read:

11 779.01 (5) ASSIGNMENT OF LIEN, GARNISHMENT. Assignment of a claim or right
12 to a lien or any part thereof by a prime contractor, or garnishment by the creditor of
13 a prime contractor, subcontractor, ~~materialman~~ supplier, service provider, laborer or
14 mechanic, shall not operate to compel the owner, prime contractor, subcontractor ~~or~~
15 ~~materialman, supplier, or service provider~~ to pay the assignee or creditor until the
16 lien claims of subcontractors, ~~materialmen~~ suppliers, service providers, and laborers
17 under this subchapter have either been paid in full, matured by notice and filing or
18 expired. If such claims become liens, the owner, prime contractor, subcontractor ~~or~~
19 ~~materialman, supplier, or service provider~~ shall be compelled to pay such assignee
20 or creditor only what remains due in excess of such liens.

21 **SECTION 14.** 779.02 (1) (b) of the statutes is amended to read:

22 779.02 (1) (b) By any lien claimant who has contracted directly with the owner
23 for the ~~work or~~ labor, services, materials, plans, or specifications performed,
24 furnished, or procured, unless the claimant is a prime contractor subject to the notice
25 requirement of sub. (2) (a).

SENATE BILL 450

SECTION 15. 779.02 (1) (c) of the statutes is amended to read:

779.02 (1) (c) By any lien claimant performing, furnishing, or procuring labor or, services, materials, plans, or specifications for an improvement in any case where more than 4 family living units are to be provided or added by such work of improvement, if the improvement is wholly residential in character, or in any case where ~~more than 10,000 total usable square feet of floor space is to be provided or added by such work of improvement,~~ if the improvement is partly or wholly nonresidential in character.

SECTION 16. 779.02 (1) (e) of the statutes is amended to read:

779.02 (1) (e) By any lien claimant, other than a prime contractor, who performs, furnishes, or procures labor or, services, materials, plans, or specifications for an improvement on a project on which the prime contractor is not required to give notice under this section.

SECTION 17. 779.02 (2) (title) of the statutes is amended to read:

779.02 (2) (title) NOTICE TO OWNER, LENDER, AND ~~MATERIALMAN~~ SUPPLIER.

SECTION 18. 779.02 (2) (a) of the statutes is amended to read:

779.02 (2) (a) Every prime contractor who enters into a contract with the owner for a work of improvement on the owner's land and who has contracted or will contract with any subcontractors ~~or materialmen, suppliers, or service providers~~ to provide perform, furnish, or procure labor or, services, materials, plans, or specifications for the work of improvement shall include in any written contract with the owner the notice required by this paragraph, and shall provide the owner with a copy of the written contract. If no written contract for the work of improvement is entered into, the notice shall be prepared separately and served ~~personally or by registered mail~~ on the owner or authorized agent within 10 days after the first labor

SENATE BILL 450

SECTION 18

1 ~~or, services, materials, plans, or specifications~~ are performed, furnished, or procured
2 for the improvement by or pursuant to the authority of the prime contractor. The
3 notice, whether included in a written contract or separately given, shall be in at least
4 8-point bold type, if printed, or in capital letters, if typewritten. It shall be in
5 substantially the following language: "As required by the Wisconsin construction
6 lien law, builder claimant hereby notifies owner that persons or companies
7 performing, furnishing, or procuring labor ~~or, services, materials, plans, or~~
8 specifications for the construction on owner's land may have lien rights on owner's
9 land and buildings if not paid. Those entitled to lien rights, in addition to the
10 undersigned builder claimant, are those who contract directly with the owner or
11 those who give the owner notice within 60 days after they first perform, furnish, or
12 procure labor ~~or, services, materials, plans or specifications~~ for the construction.
13 Accordingly, owner probably will receive notices from those who perform, furnish, or
14 procure labor ~~or, services, materials, plans, or specifications~~ for the construction, and
15 should give a copy of each notice received to the mortgage lender, if any. Builder
16 Claimant agrees to cooperate with the owner and the owner's lender, if any, to see
17 that all potential lien claimants are duly paid".

18 **SECTION 19.** 779.02 (2) (b) of the statutes is amended to read:

19 779.02 (2) (b) Every person other than a prime contractor who performs,
20 furnishes, or procures labor ~~or, materials, plans, or specifications~~ for an
21 improvement shall have the lien and remedy under this subchapter only if within 60
22 days after performing, furnishing, or procuring the first labor ~~or, services, materials,~~
23 plans, or specifications the person ~~gives~~ serves a written notice ~~in writing,~~ in 2 signed
24 copies, ~~to the owner either by personal service on the owner or authorized agent or~~
25 ~~by registered mail with return receipt requested to the owner or authorized agent at~~

SENATE BILL 450

1 the last-known post-office address. The owner or agent shall provide a copy of the
2 notice received, within 10 days after receipt, to any mortgage lender who is
3 furnishing or is to furnish funds for construction of the improvement to which the
4 notice relates. The notice to the owner shall be in substantially the following
5 language, with blanks accurately filled in: "As a part of your construction contract,
6 your prime contractor or builder claimant has already advised you that those who
7 perform, furnish, or procure labor or, services, materials, plans, or specifications for
8 the work will be notifying you. The undersigned first performed, furnished, or
9 procured labor or, services, materials, plans, or specifications on (give date) for the
10 improvement now under construction on your real estate at (give legal
11 description, street address or other clear description). Please give your mortgage
12 lender the extra copy of this notice within 10 days after you receive this, so your
13 lender, too, will know that the undersigned is included in the job".

14 **SECTION 20.** 779.02 (2) (c) of the statutes is amended to read:

15 779.02 (2) (c) If any prime contractor required to give the notice prescribed in
16 par. (a) fails to give notice as required, such the prime contractor does not have the
17 lien and remedy provided by this subchapter unless the prime contractor pays all of
18 the prime contractor's obligations to its subcontractors and materialmen, suppliers,
19 and service providers in respect to the work of improvement within the time periods
20 under s. 779.06 and until the time for notice under par. (b) has elapsed and ~~no lien~~
21 claimant either none of its subcontractors, suppliers, or service providers gives notice
22 as a lien claimant under par. (b) gives notice or all of its subcontractors, suppliers,
23 and service providers have waived all lien rights in full under s. 779.05.

24 **SECTION 21.** 779.02 (2) (d) of the statutes is amended to read:

SENATE BILL 450**SECTION 21**

1 779.02 (2) (d) Every mortgage lender making an improvement or construction
2 loan shall make reasonable inquiry of the owner as to whether any notices required
3 by this subsection have been given. A lender is not required to pay out any loan
4 proceeds unless or until the prime contractor has given any notice required of ~~such~~
5 the prime contractor by this subsection.

6 **SECTION 22.** 779.02 (2) (e) of the statutes is amended to read:

7 779.02 (2) (e) If the owner or lender complains of any insufficiency of any notice,
8 the burden of proof is upon the owner or lender to show that he or she has been misled
9 or deceived by the insufficiency. If there is more than one owner, giving the notice
10 required to any one owner or authorized agent is sufficient. In addition, every prime
11 contractor and subcontractor, at the time of purchasing or contracting for any
12 materials to be used in any of the cases enumerated in s. 779.01, shall upon request
13 deliver to the ~~materialman~~ supplier a description of the real estate upon which the
14 materials are to be used and the name and post-office address of the owner and
15 authorized agent, if any. Failure to receive such description and name and address
16 does not relieve a ~~materialman~~ supplier who asserts a lien from the requirement of
17 giving timely notice.

18 **SECTION 23.** 779.02 (3) of the statutes is amended to read:

19 779.02 (3) FAILURE TO GIVE NOTICE; SAVING CLAUSE. Any lien claimant, other than
20 the prime contractor, who fails to give a notice as required by sub. (2) (b) shall have
21 no lien on the land or improvement to which the failure relates. Any claimant who
22 serves a late but otherwise proper notice ~~personally or by registered mail~~ on the
23 owner or authorized agent shall have the lien provided by s. 779.01 for any labor ~~or~~
24 services, materials, plans, or specifications performed, furnished, or procured after
25 the late notice is actually received by the owner. The burden of proving that labor

SENATE BILL 450

1 ~~or, services, materials, plans, or specifications~~ for which a lien is claimed were
2 furnished after that date is on the lien claimant.

3 **SECTION 24.** 779.02 (5) of the statutes is amended to read:

4 779.02 (5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid
5 to any prime contractor or any subcontractor for improvements upon the mortgaged
6 premises, and all moneys paid to any prime contractor or subcontractor by any owner
7 for improvements, constitute a trust fund only in the hands of the prime contractor
8 or subcontractor to the amount of all claims due or to become due or owing from the
9 prime contractor or subcontractor for labor ~~and, services, materials, plans, and~~
10 ~~specifications~~ used for the improvements, until all the claims have been paid, and
11 shall not be a trust fund in the hands of any other person. The use of any such moneys
12 by any prime contractor or subcontractor for any other purpose until all claims,
13 except those which are the subject of a bona fide dispute and then only to the extent
14 of the amount actually in dispute, have been paid in full or proportionally in cases
15 of a deficiency, is theft by the prime contractor or subcontractor of moneys so
16 misappropriated and is punishable under s. 943.20. If the prime contractor or
17 subcontractor is a corporation, limited liability company, or other legal entity other
18 than a sole proprietorship, such misappropriation also shall be deemed theft by any
19 officers, directors ~~or, members, partners, or agents of the corporation~~ responsible for
20 the misappropriation. Any of such misappropriated moneys which have been
21 received as salary, dividend, loan repayment, capital distribution or otherwise by any
22 shareholder ~~of the corporation, member, or partner~~ not responsible for the
23 misappropriation shall be a civil liability of ~~the shareholder~~ that person and may be
24 recovered and restored to the trust fund specified in this subsection by action brought
25 by any interested party for that purpose. Except as provided in this subsection, this

SENATE BILL 450

1 section does not create a civil cause of action against any ~~other~~ person other than the
2 prime contractor or subcontractor to whom such moneys are paid. Until all claims
3 are paid in full, have matured by notice and filing or have expired, such proceeds and
4 moneys shall not be subject to garnishment, execution, levy or attachment.

5 **SECTION 25.** 779.03 (1) of the statutes is amended to read:

6 779.03 (1) NO AGREEMENT BY OTHER THAN CLAIMANT MAY INVALIDATE LIEN. Subject
7 to s. 779.05, a lien claimant may waive the lien given by s. 779.01 by a writing signed
8 by the lien claimant, but no action by nor agreement between any other persons shall
9 invalidate the lien, other than payment in full to the claimant for the labor ~~or,~~
10 services, materials, plans, or specifications to which the lien claim relates.

11 **SECTION 26.** 779.035 (1) of the statutes is amended to read:

12 779.035 (1) To eliminate lien rights as provided in s. 779.03 (2), the contract
13 between the owner and the prime contractor for the construction of the improvement
14 shall contain a provision for the payment by the prime contractor of all claims for
15 labor ~~performed and, services, materials or, plans, or specifications performed,~~
16 furnished, procured, used, or consumed, except plans or specifications furnished by
17 the architect, professional engineer or surveyor employed by the owner, in making
18 such improvement and performing the work of improvement. The contract shall not
19 be effective to eliminate lien rights unless the prime contractor gives a bond issued
20 by a surety company licensed to do business in this state. The bond shall carry a
21 penalty for unpaid claims of not less than the contract price, and shall be conditioned
22 for the payment to every person entitled thereto of all the claims for labor ~~performed,~~
23 and, services, materials, plans, and specifications performed, furnished, or procured
24 under the contract and subsequent amendments thereto, to be used or consumed in
25 making the improvement or performing the work of improvement as provided in the

SENATE BILL 450

1 contract and subsequent amendments thereto. The bond shall be approved by the
2 owner and by any mortgage lender furnishing funds for the construction of the
3 improvement. No assignment, modification or change in the contract, or change in
4 the work covered thereby, or any extension of time for completion of the contract shall
5 release the sureties on the bond.

6 **SECTION 27.** 779.035 (2) (b) 1. of the statutes is amended to read:

7 779.035 (2) (b) 1. Except as provided in subd. 2., a subcontractor ~~or~~, supplier,
8 or service provider may maintain an action under par. (a) only if the subcontractor
9 ~~or~~, supplier, or service provider has notified the prime contractor in writing that the
10 subcontractor ~~or~~, supplier, or service provider was ~~providing performing, furnishing,~~
11 or procuring labor ~~or~~, services, materials, plans, or specifications for the construction
12 of the improvement. The notice must be provided no later than 60 days after the date
13 on which the subcontractor ~~or~~, supplier, or service provider first ~~provided performed,~~
14 furnished, or procured the labor ~~or~~, services, materials, plans, or specifications.

15 **SECTION 28.** 779.035 (2) (b) 2. a. of the statutes is amended to read:

16 779.035 (2) (b) 2. a. The contract for ~~the provision of performing, furnishing,~~
17 or procuring the labor ~~or~~, services, materials, plans, or specifications does not exceed
18 \$5,000.

19 **SECTION 29.** 779.035 (2) (b) 2. c. of the statutes is amended to read:

20 779.035 (2) (b) 2. c. The subcontractor ~~or~~, supplier, or service provider is listed
21 in a written contract, or in a document appended to a written contract, between a
22 subcontractor ~~or~~, supplier, or service provider and the prime contractor.

23 **SECTION 30.** 779.035 (3) of the statutes is amended to read:

24 779.035 (3) In any case in which the improvement contract and bond have been
25 prepared and executed pursuant to sub. (1) upon inquiry by any subcontractor,

SENATE BILL 450**SECTION 30**

1 ~~materialman~~ supplier, service provider, laborer, or mechanic performing, furnishing,
2 or procuring labor or, services, materials, plans, or specifications for said
3 improvement, the prime contractor and the owner shall so advise the person making
4 the inquiry and shall give the person reasonable opportunity to inspect and examine
5 the contract and bond.

6 **SECTION 31.** 779.036 (1) of the statutes is amended to read:

7 779.036 (1) In any case in which an improvement is constructed or to be
8 constructed pursuant to a contract and payment bond under s. 779.035, any person
9 performing, furnishing, or procuring labor or, services, materials or, plans, or
10 specifications to be used or consumed in making the improvement, to any prime
11 contractor or subcontractor shall have a lien on the money or other payment due or
12 to become due the prime contractor or subcontractor therefor, if the lienor, before
13 payment is made to the prime contractor or subcontractor, ~~gives~~ serves a written
14 notice of the lienor's claim ~~by registered mail with return receipt requested to on~~ the
15 owner or authorized agent and ~~to on~~ any mortgage lender furnishing funds for the
16 construction of the improvement. Upon receipt of the notice, the owner and lender
17 shall assure that a sufficient amount is withheld to pay the claim and, when it is
18 admitted or not disputed by the prime contractor or subcontractor involved or
19 established under sub. (3), shall pay the claim and charge it to the prime contractor
20 or subcontractor as appropriate. Any owner or lender violating this duty shall be
21 liable to the claimant for the damages resulting from the violation. There shall be
22 no preference among lienors serving such notices.

23 **SECTION 32.** 779.036 (2) of the statutes is amended to read:

SENATE BILL 450

1 779.036 (2) A copy of the notice provided in sub. (1) also shall be served by the
2 lienor, within 7 days after service of the notice upon the owner and lender, upon the
3 prime contractor or subcontractor ~~by registered mail with return receipt requested.~~

4 **SECTION 33.** 779.036 (3) of the statutes is amended to read:

5 779.036 (3) If the prime contractor or subcontractor does not dispute the claim
6 by serving written notice on the owner and the lien claimant within 30 days after
7 service of written notice under sub. (2), ~~by registered mail with return receipt~~
8 ~~requested to the owner and lender,~~ the amount claimed shall be paid over to the
9 claimant on demand and charged to the prime contractor or subcontractor pursuant
10 to sub. (1). If the prime contractor or subcontractor disputes the claim, the right to
11 a lien and to the moneys in question shall be determined in an action brought by the
12 claimant or the prime contractor or subcontractor. If the action is not brought within
13 3 months from the time the notice required by sub. (1) is served, the lien rights under
14 this section are barred.

15 **SECTION 34.** 779.036 (4) (a) of the statutes is amended to read:

16 779.036 (4) (a) When the total lien claims exceed the sum due the prime
17 contractor or subcontractor concerned and where the prime contractor or
18 subcontractor has not disputed the amounts of the claims filed, the owner with the
19 concurrence of the lender shall determine on a proportional basis who is entitled to
20 the amount being withheld and shall ~~notify~~ serve a written notice of the
21 determination on all claimants and the prime contractor or subcontractor ~~in writing~~
22 ~~of the determination.~~ Unless an action is commenced by a claimant or by the prime
23 contractor or subcontractor within 20 days after the mailing service of said notice,
24 the money shall be paid out in accordance with the determination and the liability
25 of the owner and lender to any claimant shall cease.

SENATE BILL 450

1 **SECTION 35.** 779.05 (1) of the statutes is amended to read:

2 779.05 (1) Any document signed by a lien claimant or potential claimant and
3 purporting to be a waiver of construction lien rights under this subchapter, is valid
4 and binding as a waiver whether or not consideration was paid therefor and whether
5 the document was signed before or after the labor ~~or material was~~, services,
6 materials, plans, or specifications were performed, furnished, or procured, or
7 contracted for. Any ambiguity in such document shall be construed against the
8 person signing it. Any waiver document shall be deemed to waive all lien rights of
9 the signer for all labor ~~and~~, services, materials, plans, or specifications performed,
10 furnished, or procured, or to be performed, furnished, or procured, by the claimant
11 at any time for the improvement to which the waiver relates, except to the extent that
12 the document specifically and expressly limits the waiver to apply to a particular
13 portion of such labor ~~and~~, services, materials, plans, or specifications. A lien
14 claimant or potential lien claimant of whom a waiver is requested is entitled to refuse
15 to furnish a waiver unless paid in full for the ~~work or material~~ labor, services,
16 materials, plans, or specifications to which the waiver relates. A waiver furnished
17 is a waiver of lien rights only, and not of any contract rights of the claimant otherwise
18 existing.

19 **SECTION 36.** 779.06 (1) of the statutes is amended to read:

20 779.06 (1) No lien under s. 779.01 shall exist and no action to enforce a lien
21 under s. 779.01 shall be maintained unless within 6 months from the date the lien
22 claimant performed, furnished, or procured the last labor ~~or~~, services, materials,
23 plans, or specifications, a claim for the lien is filed in the office of the clerk of circuit
24 court of the county in which the lands affected by the lien lie, and unless within 2
25 years from the date of filing a claim for lien an action is brought and summons and

SENATE BILL 450

1 complaint filed. A lien claimant shall serve a copy of the claim for lien on the owner
2 of the property on which the lien is placed within 30 days after filing the claim. A
3 claim for a lien may be filed and entered in the judgment and lien docket, and action
4 brought, notwithstanding the death of the owner of the property affected by the
5 action or of the person with whom the original contract was made, with like effect as
6 if he or she were then living.

7 **SECTION 37.** 779.06 (2) of the statutes is amended to read:

8 779.06 (2) No lien claim may be filed or action brought thereon unless, at least
9 30 days before timely filing of the lien claim, the lien claimant serves on the owner,
10 ~~personally or by registered mail with return receipt requested,~~ a written notice of
11 intent to file a lien claim. The notice is required to be given whether or not the
12 claimant has been required to and has given a previous notice pursuant to s. 779.02.
13 Such notice shall briefly describe the nature of the claim, its amount and the land
14 and improvement to which it relates.

15 **SECTION 38.** 779.06 (3) of the statutes is amended to read:

16 779.06 (3) Such a claim for lien shall have attached thereto a copy of any notice
17 given in compliance with s. 779.02 and a copy of the notice given in compliance with
18 sub. (2), and shall contain a statement of the contract or demand upon which it is
19 founded, the name of the person against whom the demand is claimed, the name of
20 the claimant and any assignee, the last date of ~~the performance of~~ performing,
21 furnishing, or procuring any labor ~~or the furnishing of any, services, materials, plans,~~
22 or specifications, a legal description of the property against which the lien is claimed,
23 a statement of the amount claimed and all other material facts in relation thereto.
24 Such claim document shall be signed by the claimant or attorney, need not be
25 verified, and in case of action brought, may be amended, as pleadings are.

SENATE BILL 450**SECTION 39**

1 **SECTION 39.** 779.07 (1) (d) of the statutes is amended to read:

2 779.07 (1) (d) Last date of ~~performance of performing, furnishing, or procuring~~
3 labor ~~or furnishing, services, materials, plans, or specifications.~~

4 **SECTION 40.** 779.08 (1) of the statutes is amended to read:

5 779.08 (1) The person against whom a lien is claimed or any other interested
6 party may file with the clerk of court in whose office the claim for lien is filed an
7 undertaking executed by ~~2 or more sufficient sureties~~ a surety to the effect that the
8 person against whom the lien is claimed shall pay the amount of the claim and all
9 costs and damages which may be awarded against that person on account of the lien
10 or in lieu thereof deposit with the clerk of the court a sum of money, certified check
11 or negotiable government bonds in par value equal to 125% of the claim for lien. The
12 court in which any action to foreclose the lien may be brought shall determine any
13 question of sufficiency of the ~~sureties~~ surety if exception is taken thereto by the lien
14 claimant within 10 days after notice of the filing of such undertaking or deposit of
15 other security and may upon notice and upon motion of any party, order any sum of
16 money deposited to be invested. The clerk of court shall remove the lien from the
17 judgment and lien docket upon the court's order approving the surety in substitution
18 for the lien. The depositor shall be entitled to any income from the investments,
19 certified check or negotiable U.S. government bonds deposited and the clerk shall
20 pay the income to the depositor without order when received or, in the case of
21 coupons, as the income becomes due.

22 **SECTION 41.** 779.08 (2) of the statutes is amended to read:

23 779.08 (2) If an undertaking is furnished, it shall be accompanied by the
24 affidavits affidavit of the ~~sureties~~ surety in which each states that the surety is
25 worth, over and above all debts and liabilities in property within this state not

SENATE BILL 450

1 exempt from execution, an amount in the aggregate equal to 125% or more of the
2 amount of the claim for lien.

3 **SECTION 42.** 779.10 of the statutes is amended to read:

4 **779.10 Judgment.** The judgment shall adjudge the amount due to each
5 claimant who is a party to the action. It shall direct that the interest of the owner
6 in the premises at the commencement of the ~~work or~~ performing, furnishing, or
7 procuring the labor, services, materials, plans, or specifications for which liens are
8 given and which the owner has since acquired, or so much thereof as is necessary, be
9 sold to satisfy the judgment, and that the proceeds be brought into court with the
10 report of sale to abide the order of the court. If the premises can be sold in parcels
11 without injury to the parties, the court may adjudge that the sale be so made. If the
12 plaintiff fails to establish a lien upon the premises but does establish a right to
13 recover for labor ~~or~~, services, materials, plans, or specifications, the plaintiff may
14 have a judgment against the party liable.

15 **SECTION 43.** 779.13 (2) of the statutes is amended to read:

16 **779.13 (2)** Every lien claimant, or the attorney who executed and filed a claim
17 for lien on the claimant's behalf, who has received from any person interested in the
18 premises described in the claim a written statement that the premises described in
19 the claim are not in fact the premises on which the claimant performed, furnished,
20 or procured the ~~work or~~ labor, services, materials, plans, or specifications to which
21 the claim relates together with a written demand that the claim be satisfied of record
22 shall, if in fact the statement of such person about the mistaken description is true,
23 promptly satisfy the lien claim of record at the lien claimant's expense. Failure to
24 satisfy the lien claim of record within a reasonable time, if in fact the statement
25 asserting the mistaken description is true, shall render the person so failing liable

SENATE BILL 450

1 to pay to the person demanding the satisfaction a sum equal to one-half of the sum
2 claimed in the claim for lien.

3 **SECTION 44.** 779.135 (1) of the statutes is amended to read:

4 779.135 (1) Provisions requiring ~~a contractor, subcontractor or material~~
5 ~~supplier~~ any person entitled to a construction lien to waive his or her right to a
6 construction lien or to a claim against a payment bond before he or she has been paid
7 for the labor ~~or, services, materials or both, plans, or specifications~~ that he or she
8 performed, furnished, or procured.

9 **SECTION 45.** 779.135 (3) of the statutes is amended to read:

10 779.135 (3) Provisions making a payment to a general prime contractor from
11 any person who does not have a contractual agreement with the subcontractor ~~or,~~
12 supplier, or service provider a condition precedent to a general prime contractor's
13 payment to a subcontractor ~~or a, supplier, or service provider.~~ This subsection does
14 not prohibit contract provisions that may delay a payment to a subcontractor until
15 the prime contractor receives payment from any person who does not have a
16 contractual agreement with the subcontractor ~~or, supplier, or service provider.~~

17 **SECTION 46.** 779.14 (1) (intro.) of the statutes is amended to read:

18 779.14 (1) DEFINITION. (intro.) In this section, "subcontractor ~~or, supplier, or~~
19 service provider" means the following:

20 **SECTION 47.** 779.14 (1) (a) of the statutes is amended to read:

21 779.14 (1) (a) Any person who has a direct contractual relationship, expressed
22 or implied, with the prime contractor or with any subcontractor of the prime
23 contractor to perform, furnish, or procure labor ~~or furnish, services, materials, plans,~~
24 or specifications, except as provided in par. (b).

25 **SECTION 48.** 779.14 (1) (b) of the statutes is amended to read:

SENATE BILL 450

1 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) for
2 highway improvements, any person who has a direct contractual relationship,
3 expressed or implied, with the prime contractor to perform, furnish, or procure labor
4 ~~or furnish, services, materials, plans, or specifications.~~

5 **SECTION 49.** 779.14 (1e) (a) of the statutes is amended to read:

6 779.14 (1e) (a) All contracts involving \$10,000 or more for the performance of
7 performing, furnishing, or procuring labor ~~or furnishing, services, materials, plans,~~
8 ~~or specifications,~~ when the same pertains to any public improvement or public work
9 shall contain a provision for the payment by the prime contractor of all claims for
10 labor ~~performed and, services, materials, plans, or specifications performed,~~
11 ~~furnished, procured, used, or consumed in making that pertain to the public~~
12 ~~improvement or performing the public work, including, without limitation because~~
13 ~~of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors,~~
14 ~~equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline,~~
15 ~~motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's~~
16 ~~compensation insurance and contributions for unemployment insurance.~~

17 **SECTION 50.** 779.14 (1e) (b) of the statutes is amended to read:

18 779.14 (1e) (b) All contracts that are in excess of \$30,000, as indexed under sub.
19 (1s), and that are for the performance of performing, furnishing, or procuring labor
20 ~~or furnishing, services, materials, plans, or specifications~~ for a public improvement
21 or public work shall contain a provision under which the prime contractor agrees, to
22 the extent practicable, to maintain a list of all subcontractors ~~and, suppliers, and~~
23 ~~service providers~~ performing, furnishing, or procuring labor ~~or furnishing, services,~~
24 ~~materials, plans, or specifications~~ under the contract.

25 **SECTION 51.** 779.14 (1m) (c) (intro.) of the statutes is amended to read:

SENATE BILL 450

SECTION 51

1 779.14 (1m) (c) *State contracts.* (intro.) The following requirements apply to
2 contracts with the state for ~~the performance of performing, furnishing, or procuring~~
3 ~~labor or furnishing, services, materials, plans, or specifications~~ for a public
4 improvement or public work:

5 **SECTION 52.** 779.14 (1m) (d) (intro.) of the statutes is amended to read:

6 779.14 (1m) (d) *Local government contracts.* (intro.) The following
7 requirements apply to contracts, other than contracts with the state, for ~~the~~
8 ~~performance of performing, furnishing, or procuring labor or furnishing, services,~~
9 ~~materials, plans, or specifications~~ for a public improvement or public work:

10 **SECTION 53.** 779.14 (1m) (e) 2. b. of the statutes is amended to read:

11 779.14 (1m) (e) 2. b. The payment to every person, including every
12 subcontractor ~~or~~, supplier, or service provider, of all claims that are entitled to
13 payment for labor ~~performed and, services, materials, plans, or specifications~~
14 ~~performed, furnished, or procured~~ for the purpose of making the public improvement
15 or performing the public work as provided in the contract and sub. (1e) (a).

16 **SECTION 54.** 779.14 (2) (a) (intro.) of the statutes is amended to read:

17 779.14 (2) (a) (intro.) Except as provided in par. (am), no later than one year
18 after the completion of work under the contract, any party in interest, including any
19 subcontractor ~~or~~, supplier, or service provider, may maintain an action in that party's
20 name against the prime contractor and the sureties upon the bond for the recovery
21 of any damages sustained by reason of any of the following:

22 **SECTION 55.** 779.14 (2) (a) 2. of the statutes is amended to read:

23 779.14 (2) (a) 2. Except as provided in subd. 3., failure of the prime contractor
24 or a subcontractor of the prime contractor to comply with a contract, whether express
25 or implied, with a subcontractor ~~or~~, supplier, or service provider for ~~the performance~~

SENATE BILL 450

1 ~~of performing, furnishing, or procuring labor or furnishing of, services, materials,~~
2 ~~plans, or specifications~~ for the purpose of making the public improvement or
3 performing the public work that is the subject of the contract with the governmental
4 entity.

5 **SECTION 56.** 779.14 (2) (a) 3. of the statutes is amended to read:

6 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) for
7 highway improvements, failure of the prime contractor to comply with a contract,
8 whether express or implied, with a subcontractor ~~or, supplier, or service provider~~ of
9 the prime contractor for ~~the performance of performing, furnishing, or procuring~~
10 ~~labor or furnishing of, services, materials, plans, or specifications~~ for the purpose of
11 making the highway improvement that is the subject of the contract with the
12 governmental entity.

13 **SECTION 57.** 779.14 (2) (am) 1. of the statutes is amended to read:

14 779.14 (2) (am) 1. Except as provided in subd. 2., a subcontractor ~~or, supplier,~~
15 ~~or service provider~~ may maintain an action under par. (a) only if the subcontractor
16 ~~or, supplier, or service provider~~ has notified ~~served~~ served a written notice on the prime
17 contractor ~~in writing~~ that the subcontractor ~~or, supplier, or service provider~~ has
18 ~~provided performed, furnished, or procured,~~ or will ~~provide perform, furnish, or~~
19 ~~procure~~ labor ~~or, services, materials, plans, or specifications~~ to the public work or
20 improvement. The notice must be ~~provided~~ served no later than 60 days after the
21 date on which the subcontractor ~~or, supplier, or service provider~~ first ~~provided~~
22 ~~performed, furnished, or procured~~ the labor ~~or, services, materials, plans, or~~
23 ~~specifications.~~

24 **SECTION 58.** 779.14 (2) (am) 2. a. of the statutes is amended to read:

SENATE BILL 450

SECTION 58

1 779.14 (2) (am) 2. a. The contract for ~~the provision of performing, furnishing,~~
2 ~~or procuring~~ the labor ~~or, services, materials, plans, or specifications~~ does not exceed
3 \$5,000.

4 **SECTION 59.** 779.14 (2) (am) 2. b. of the statutes is amended to read:

5 779.14 (2) (am) 2. b. The action is brought by an employee of the prime
6 contractor, the subcontractor ~~or the,~~ supplier, or service provider.

7 **SECTION 60.** 779.14 (2) (am) 2. c. of the statutes is amended to read:

8 779.14 (2) (am) 2. c. The subcontractor ~~or,~~ supplier, or service provider is listed
9 in the list required to be maintained under sub. (1e) (b) or in a written contract, or
10 in a document appended to a written contract, between a subcontractor ~~or,~~ supplier,
11 or service provider and the prime contractor.

12 **SECTION 61.** 779.14 (3) of the statutes is amended to read:

13 779.14 (3) ACTIONS BY A COUNTY. In an action by a county upon the bond all
14 persons for whose protection it was given and who make claim thereunder may be
15 joined in the action. The county highway commissioner may take assignments of all
16 demands and claims for labor ~~or material, services, materials, plans, or~~
17 specifications and enforce the same in the action for the benefit of the assignors, and
18 the judgment may provide the manner in which the assignors shall be paid.

19 **SECTION 62.** 779.15 (title) of the statutes is amended to read:

20 **779.15 (title) Public improvements; lien on money, bonds, or warrants**
21 **due the prime contractor; duty of officials.**

22 **SECTION 63.** 779.15 (1) of the statutes is amended to read:

23 779.15 (1) Any person ~~furnishing who performs, furnishes, procures, manages,~~
24 supervises, or administers any labor or, services, materials, plans, or specifications
25 ~~to be used or consumed in making public improvements or performing public work,~~

SENATE BILL 450

1 including ~~fuel, lumber, machinery, vehicles, tractors, equipment, fixtures,~~
2 ~~apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil,~~
3 ~~lubricating oil, greases, state imposed taxes, premiums for worker's compensation~~
4 ~~insurance and contributions for unemployment insurance,~~ to any prime contractor,
5 except in cities of the 1st class, shall have a lien on the money or bonds or warrants
6 due or to become due the prime contractor therefor, if the lienor, before payment is
7 made to the prime contractor, ~~gives~~ serves a written notice ~~to~~ of the claim on the
8 debtor state, county, town, or municipality ~~of the claim~~. The debtor shall withhold
9 a sufficient amount to pay the claim and, when it is admitted by the prime contractor
10 or established under sub. (3), shall pay the claim and charge it to the prime
11 contractor. Any officer violating the duty hereby imposed shall be liable on his or her
12 official bond to the claimant for the damages resulting from the violation. There shall
13 be no preference between the lienors serving the notices.

14 **SECTION 64.** 779.15 (2) of the statutes is amended to read:

15 779.15 (2) Service of the notice under sub. (1) shall be made ~~by registered mail~~
16 upon the clerk of the municipality or in the clerk's absence upon the treasurer. If any
17 of the money due the prime contractor is payable by the state, service of the notice
18 under sub. (1) shall be served ~~by registered mail~~ upon the state department, board,
19 or commission having jurisdiction over the work. A copy of the notice shall be served
20 concurrently ~~by registered mail~~ upon the prime contractor.

21 **SECTION 65.** 779.15 (3) of the statutes is amended to read:

22 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor does not
23 dispute the claim within 30 days after service on the prime contractor of the notice
24 provided in sub. (2), by serving written notice ~~to~~ on the debtor state, county, town,
25 or municipality and the lien claimant, the amount claimed shall be paid over to the

SENATE BILL 450

1 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the
2 prime contractor disputes the claim, the right to a lien and to the moneys in question
3 shall be determined in an action brought by the claimant or the prime contractor.
4 If the action is not brought within 3 months from the time the notice required by sub.
5 (1) is served, and notice of bringing the action filed with the officer with whom the
6 claim is filed, the lien rights are barred.

7 **SECTION 66.** 779.15 (4) (a) of the statutes is amended to read:

8 779.15 (4) (a) When the total of the lien claims exceeds the sum due the prime
9 contractor and where the prime contractor has not disputed the amounts of the
10 claims filed, the debtor state, county, town or municipality, through the officer, board,
11 department or commission with whom the claims are filed, shall determine on a
12 proportional basis who is entitled to the money and shall notify all claimants and the
13 prime contractor in writing of the determination. Unless an action is commenced by
14 a claimant or by the prime contractor within 20 days after the mailing of the notice,
15 the money shall be paid out in accordance with the determination and the liability
16 of the state, county, town or municipality to any lien claimant shall cease.

17 **SECTION 67.** 779.155 (2) of the statutes is amended to read:

18 779.155 (2) CERTIFIED COPIES OF JUDGMENTS FILED. In this section,
19 “municipality” includes city, village, county, town, school district, technical college
20 district and any quasi municipal corporation. When the state or any municipality
21 is indebted to any prime contractor, the owner of a judgment against the prime ~~prime~~
22 contractor may attach the debt by filing a certified copy of his or her judgment in the
23 manner and subject to the conditions and limitations of this section. If the debt is
24 owed by the state upon a contract for public improvements, the certified copy shall
25 be filed with the officer, board, department or commission having jurisdiction over

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SENATE BILL 450

1 the work. Otherwise, the copy shall be filed with the department of administration.
2 If the debt is owed by a municipality, the copy shall be filed with the municipal clerk
3 or corresponding officer. The judgment creditor shall promptly notify the judgment
4 debtor of the filing, within the time and as provided by s. 812.07 for service upon the
5 defendant.

6 **SECTION 68.** 779.155 (3) of the statutes is amended to read:

7 779.155 (3) PAYMENT TO JUDGMENT CREDITOR; EXCEPTION. Except as to prime
8 contractors on public works, the proper officers of the state or municipality shall pay
9 the judgment out of moneys due the prime contractor or which become due the prime
10 contractor, but no payment shall be made until 30 days after the creditor has filed
11 with such officers proof that the contractor had been notified of the filing of a copy
12 of the judgment against the contractor.

13 **SECTION 69.** 779.155 (4) of the statutes is amended to read:

14 779.155 (4) SAME; FUNDS DUE PUBLIC PRIME CONTRACTORS. When the state or a
15 municipality is indebted to a prime contractor for public improvements, payment
16 shall not be made to the judgment creditor until 3 months after final completion and
17 acceptance of the public work and then only out of moneys due the prime contractor
18 in excess of unpaid lienable claims having priority under s. 779.15.

19 **SECTION 70.** 779.155 (5) (a) of the statutes is amended to read:

20 779.155 (5) (a) For the purpose of administering this section, sworn statements
21 of the prime contractor setting forth the unpaid lien claims that have been or may
22 be filed under s. 779.15 may be accepted by the proper officer, board, department, or
23 commission, unless the judgment creditor or other interested person gives written
24 notice that an action is pending to determine whether specified lien claims were

SENATE BILL 450**SECTION 70**

1 incurred in performing the public work and the amount thereof, or to determine
2 priorities in which event payments shall await the result of the action.

3 **SECTION 71.** 779.155 (5) (b) of the statutes is amended to read:

4 779.155 (5) (b) Within 10 days after filing the certified copy of the judgment
5 under sub. (2), the prime contractor shall file the sworn statement in duplicate, with
6 the proper officer, board, department or commission, who shall immediately furnish
7 the judgment creditor with one of the statements. The judgment creditor shall have
8 10 days from the receipt thereof in which to serve the notice of pendency of the court
9 action.

10 **SECTION 72.** 779.155 (6) of the statutes is amended to read:

11 779.155 (6) PAYMENTS TO JUDGMENT CREDITOR. After the expiration of the
12 3-month period, the moneys due the prime contractor in excess of unpaid lienable
13 expenses and claims incurred in performing the public work shall be paid to the
14 judgment creditor, but not exceeding the amount due on the judgment.

15 **SECTION 73.** 779.155 (7) of the statutes is amended to read:

16 779.155 (7) PRIORITY OF JUDGMENTS OVER ASSIGNMENTS. Any judgment filed
17 under this section has priority over an assignment made by the prime contractor
18 after the commencement of the action in which the judgment was obtained.

19 **SECTION 74.** 779.16 of the statutes is amended to read:

20 **779.16 Theft by contractors.** All moneys, bonds or warrants paid or to
21 become due to any prime contractor or subcontractor for public improvements are a
22 trust fund only in the hands of the prime contractor or subcontractor to the amount
23 of all claims due or to become due or owing from the prime contractor or subcontractor
24 for labor, services, materials, plans, and specifications performed, furnished, or
25 procured for the improvements, until all the claims have been paid, and shall not be

SENATE BILL 450

1 a trust fund in the hands of any other person. The use of the any such moneys by the
2 any prime contractor or subcontractor for any other purpose ~~other than the payment~~
3 ~~of claims on such public improvement, before the~~ until all claims have been satisfied,
4 ~~constitutes, except those which are the subject of a bona fide dispute and then only~~
5 to the extent of the amount actually in dispute, have been paid in full or
6 proportionally in cases of a deficiency, is theft by the prime contractor or
7 subcontractor of moneys so misappropriated and is punishable under s. 943.20. ~~This~~
8 If the prime contractor or subcontractor is a corporation, limited liability company,
9 or other legal entity other than a sole proprietorship, such misappropriation also
10 shall be deemed theft by any officers, directors, members, partners, or agents
11 responsible for the misappropriation. Any of such misappropriated moneys which
12 have been received as salary, dividend, loan repayment, capital distribution or
13 otherwise by any shareholder, member, or partner not responsible for the
14 misappropriation shall be a civil liability of that person and may be recovered and
15 restored to the trust fund specified in this subsection by action brought by any
16 interested party for that purpose. Except as provided in this subsection, this section
17 shall not create a civil cause of action against any person other than the prime
18 contractor or subcontractor to whom such moneys are paid or become due. Until all
19 claims are paid in full, have matured by notice and filing or have expired, such
20 money, bonds and warrants shall not be subject to garnishment, execution, levy or
21 attachment.

22 **SECTION 75.** 779.17 of the statutes is amended to read:

23 **779.17 Release of funds on filing bond.** At any time after the service of a
24 notice of lien claim or filing of judgment or pending the determination of any action
25 commenced thereunder, the prime contractor shall be entitled to the release of any

SENATE BILL 450

1 moneys due the prime contractor under the contract upon filing a bond, executed by
2 a surety company duly authorized to transact business in this state, with the public
3 authority having jurisdiction over the work, guaranteeing that the prime contractor
4 will pay any judgment of the court rendered in favor of the lien claimant and all
5 judgments filed. Such bond shall be in an amount sufficient to insure payment of the
6 lien claims and judgments, and shall be approved as to form and amount by the
7 public authority.

8 **SECTION 76. Initial applicability.**

9 (1) This act first applies to improvements that visibly commence on the
10 effective date of this subsection.

11 (END)

**ASSEMBLY AMENDMENT 1,
TO 2005 SENATE BILL 450**

February 23, 2006 – Offered by Representative MOULTON.

At the locations indicated, amend the bill as follows:

1. Page 6, line 16: after that line insert:

SECTION 6g. 779.01 (2) (am) of the statutes is created to read:

779.01 (2) (am) "Labor" includes any wages and related contributions for state employment taxes, worker's compensation and unemployment compensation insurance, and other fringe benefits.

SECTION 6r. 779.01 (2) (bm) of the statutes is created to read:

779.01 (2) (bm) "Materials" includes any construction materials, supplies, tools, fixtures, equipment, machinery, vehicles, fuel, and energy."

(END)

**ASSEMBLY AMENDMENT 2,
TO 2005 SENATE BILL 450**

March 6, 2006 – Offered by Representative MOULTON.

2-1

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 7: after “delivery” insert “; except that in s. 779.15, with respect
3 to serving the state, “serve” or “served” means delivery by registered or certified
4 mail”.

5 (END)